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ONE VISA SDN BHD v. TELEKOM MALAYSIA BHD

HIGH COURT MALAYA, KUALA LUMPUR
YEOH WEE SIAM J
[CIVIL SUIT NO: 22NCVC-1080-09-2012]
22 APRIL 2014

B

LAND LAW: *Trespass – Damages – Plaintiff purchased lands via auction – Presence of defendant's telecommunication infrastructure – Plaintiff sought compensation against defendant for trespass on lands – Whether defendant removed infrastructure without knowledge of plaintiff – Whether defendant's action justified*
C *under Communications and Multimedia Act 1998 – Whether removal of infrastructure caused damages on lands – Whether State Government and previous proprietors of lands took action against defendant for trespass – Whether historical basis and legal justification of defendant's position considered – Whether plaintiff purchased lands on 'as is where is' basis – Whether plaintiff entitled to monthly*
D *rental for use of lands – Whether defendant liable to pay quit rent and assessment*

LAND LAW: *Sale of land – Auction – Proclamation of sale – Purchase of lands on 'as is where is' basis – Plaintiff did not have knowledge about defendant's telecommunication infrastructure on lands prior to auction – Whether land purchased according to its existing condition – Whether plaintiff succeeded in*
E *claiming for compensation against defendant for trespass*

TORT: *Trespass to land – Damages – Plaintiff purchased lands via auction – Presence of defendant's telecommunication infrastructure – Plaintiff sought compensation against defendant for trespass on lands – Whether defendant removed infrastructure without knowledge of plaintiff – Whether defendant's action justified*
F *under Communications and Multimedia Act 1998 – Whether removal of infrastructure caused damages on lands – Whether State Government and previous proprietors of lands took action against defendant for trespass – Whether historical basis and legal justification of defendant's position considered – Whether plaintiff purchased lands on 'as is where is' basis – Whether plaintiff entitled to monthly*
G *rental for use of lands – Whether defendant liable to pay quit rent and assessment – Whether plaintiff entitled to claim for loss of alleged opportunity and/or loss of profit*

EVIDENCE: *Documentary evidence – Admissibility of – Failure to call maker – Recipient of letter tendered letter in court – Whether accepted as evidence*

H

The plaintiff was the beneficial and registered owner of five pieces of adjoining lands ('the lands'). The lands were purchased at an auction held on 22 March 2011 and the plaintiff was registered as the owner on 18 November 2011. However, the plaintiff discovered that the lands were
I occupied by squatters only after purchasing it and the said squatters were supplied with basic amenities such as electricity, water and

telecommunications services. It was also discovered that the defendant had erected, constructed and emplaced telecommunications infrastructure such as poles, conduit pipes and other equipments ('infrastructure') on the lands and provided telecommunication services to the squatters. After the plaintiff became aware of the defendant's alleged unlawful use and trespass on the lands, the plaintiff wrote a letter to the defendant and demanded for compensation. The defendant denied the claim and gave notice to the plaintiff that it would take necessary steps to relocate its equipment from the lands. A notice of intention to enter and do work on land under s. 221(1) of the Communications and Multimedia Act 1998 ('the CMA') was issued to the plaintiff. Sometime in September 2012, without the knowledge of the plaintiff, the defendant's employees entered the lands to remove the infrastructure. The plaintiff's claim was premised, *inter alia*, on the fact that the defendant had trespassed on the lands by placing its infrastructure without the permission and/or consent of the plaintiff and as a result, the plaintiff suffered damages. The plaintiff sought judgment against the defendant for the sum of RM221,472,061 and applied for, *inter alia*, the following reliefs: (i) a declaration that the defendant was a trespasser on the lands; (ii) special damages amounting to RM23,077,166 being the total rental value of the lands based on its current prevailing market value; (iii) special damages amounting to RM198,110,908 being loss of opportunity and/or loss of profit due to the continued wrongful occupation of the squatters which was caused, encouraged and/or facilitated by the defendant and this prevented the plaintiff from developing the lands to its full potential; and (iv) claim for quit rent and land assessment for the year 2012. It was alleged that the defendant's predecessor, *ie*, Jabatan Telekom Malaysia ('JTM') had erected the infrastructure and it was there since the 1960s. Further, it was contended that the State Government, throughout the years before alienation of the lands, had never objected to the infrastructure. JTM was subsequently privatised and pursuant to the Telecommunication Services (Successor Company) Act 1985, the defendant became the successor company of JTM and was vested by the Government of Malaysia with all the rights, designated property and liabilities of JTM. In 1981, the lands were alienated by the State Government to Lesco Development Corporation Sdn Bhd ('Lesco') and subsequently to Medan Selasih Sdn Bhd ('Medan Selasih'), *ie*, the proprietor of the lands before the plaintiff. The defendant relied on a letter dated 24 January 2014 issued by the Pejabat Pengarah Tanah dan Galian Negeri Sembilan ('PTG's letter') addressed to the defendant's general manager ('DW1') to prove that the entry and emplacement of the infrastructure on the lands was approved by the State Government. The plaintiff, however, submitted that the PTG's letter could not be accepted since, *inter alia*, the maker of the letter was not called as a witness to give evidence.

A B C D E F G H I

Held (dismissing plaintiff's claim except for awarding special damages for the sum of RM4,818.40 for rental of the lands):

(1) PTG's letter was accepted as evidence. Even though the maker was not called as a witness, it sufficed for DW1, being the addressee and recipient of the letter to tender it in court as an exhibit. Based on the contents of the said letter, the State Government had never objected to the defendant's infrastructure being on the lands before the alienation of the lands to Lesco. The letter was of general application and was wide enough to cover the defendant in this case, more so when it was addressed to the general manager of the defendant. From the 1960s until the plaintiff purchased the lands at the auction and was subsequently registered as the owner of the lands, the State Government, Lesco and Medan Selasih had never objected to the defendant's infrastructure being built and maintained on the lands. It was thus unconscionable for the plaintiff to now file this action for such a huge claim when the State Government and the previous proprietors of the lands did not take any action for trespass against the defendant by way of acquiescence (*Oakfield Enterprises Sdn Bhd v. Tenaga Nasional Bhd*; foll). (paras 34, 37, 38, 39, 41 & 44)

(2) The defendant erred when it entered the lands to remove its infrastructure sometime in September 2012. While the court does not condone the defendant's failure to inform the plaintiff of the actual date for its entry on the lands, reference was made to ss. 214 and 215 of the CMA which confer the defendant with powers, as a licensee, to enter on the land for installation of network facilities or to inspect the land and do anything that was necessary for that purpose, including making surveys. Further, the defendant, which was empowered under the Telecommunications Act 1950 to install infrastructure on the lands was also empowered under the provisions of the CMA to remove its infrastructure from the lands. This would entail entry into the plaintiff's lands for that purpose. (paras 49 & 50)

(3) The defendant acted swiftly to remove its infrastructure from the lands. The plaintiff did not prove that the defendant caused any damage to the lands as a result of such removal. Based on the historical basis and legal justification of the defendant's position, the defendant should not be made liable to the plaintiff for trespass and damages for trespass. (paras 51 & 52)

(4) The plaintiff purchased the lands on the basis of "as is where is" as evidenced by the proclamation of sale for the public auction. The application of "as is where is" was in relation to the plaintiff's purchase of the lands according to its existing condition. The plaintiff ought to have known or was otherwise deemed to have known about the existence of the defendant's infrastructure and of any squatters prior to

the purchase of the lands. Further, in a scenario where there was no supply of electricity and water, even if the defendant were to continue providing its telecommunications service to the squatters, it was highly improbable that the squatters would continue to stay on the plaintiff's lands. As such, the plaintiff's claim against the defendant for trespass and damages pursuant to it with regards to the presence of the squatters on the lands was without basis and could not be sustained. (paras 54, 55, 57, 58 & 59)

(5) While the defendant was not liable for trespass and damages for trespass, in the interest of justice, the defendant ought to pay the plaintiff a monthly rental of that portion of the lands occupied by its infrastructure from the time the plaintiff was registered as the proprietor of the lands on 18 November 2011 until the time when the defendant removed its infrastructure in September 2012, *ie*, for a period of about ten months. The defendant's infrastructure only occupied 876.075 square metres of the total land area. The prevailing market rental value of the lands was 55 cents per square metre. As such, the plaintiff was awarded special damages for the sum of RM4,818.40 as rental to be paid by the defendant. (paras 61, 63, 64 & 75)

(6) It was the plaintiff's obligation under the law, as a proprietor, to pay the quit rent that was imposed on it. There was no legal basis for the plaintiff to claim the quit rent from the defendant. As such, the plaintiff's claim for quit rent for the year 2012 against the defendant was baseless and could not be allowed. Further, the plaintiff had concocted the amount claimed for assessment of the lands. The Majlis Perbandaran Seremban had confirmed that the lands were not subject to assessment. This claim was therefore vexatious, scandalous and mischievous. (paras 66, 68 & 69)

(7) There was no evidence that the plaintiff had suffered loss of opportunity for use of the lands due to the defendant's infrastructure, whether in the form of loss of potential tenants or through development of the lands. There was no evidence of a development plan for the lands. Further, there was no evidence that the presence of the infrastructure prevented the plaintiff from developing the lands to their full potential. In the absence of cogent evidence to support the claim, the plaintiff was not allowed to claim for loss of opportunity and/or loss of profit by reason of the defendant's occupation on the lands by its infrastructure. (paras 71-73)

Case(s) referred to:

Bukit Lenang Development Sdn Bhd v. Telekom Malaysia Bhd & Ors [2012] 1 CLJ 228 HC ***(refd)***

Oakfield Enterprises Sdn Bhd v. Tenaga Nasional Bhd [2010] 8 CLJ 42 CA ***(foll)***

Tan Wee Choon v. Ong Peck Seng & Anor [1985] 1 CLJ 478; [1985] CLJ (Rep) 798 HC ***(refd)***

Legislation referred to:
Communications and Multimedia Act 1998, ss. 214, 215, 221(1)

Other source(s) referred to:
Halsbury's Laws of England, 3rd edn, vol 38, p 739

For the plaintiff - Vanessa Wong; M/s Peter Ling & Van Geyzel
For the defendant - P Jeyakumar (Nurhidayah, Lourdes Abishegam & Thevini Nayagam with him); M/s Zahir Jeya & Zainal

Reported by Kumitha Abd Majid

JUDGMENT

Yeoh Wee Siam J:

Plaintiff's Claim

[1] In brief, the plaintiff's claim against the defendant is for trespass on the plaintiff's lands, and damages arising from the trespass.

[2] By this writ action the plaintiff seeks judgment against the defendant for a total sum of RM221,472,061. In the statement of claim, the plaintiff applied for the following reliefs:

(a) A declaration that the defendant is a trespasser on the lands and is a nuisance to the plaintiff;

(b) Special damages amounting to RM23,077,116 being the total rental value of the lands based on its current prevailing market value rates calculated with effect from 22 March 2011 and continuing until cessation of the telecommunication services and the date of removal of the defendant's offending infrastructure from the lands as per annexure A and/or alternatively for the same to be assessed;

(c) Special damages amounting to RM198,110,908 being loss of opportunity and/or loss of profit by reason of the continued wrongful occupation of the squatters which was caused, encouraged and or facilitated by the defendant resulting in the plaintiff being prevented from developing the lands to its full potential as per annexure B and/or alternatively, for the same to be assessed;

(d) Quit rent for the five pieces of land for the year 2012 amounting to RM234,677 and continuing until full and final settlement thereof and/or alternatively, for the same to be assessed;

(e) Land assessment ("assessment") for the five pieces of land for the year 2012 amounting to RM49,360 and continuing until full and final settlement thereof and/or alternatively, for the same to be assessed;

(f) General damages;

(g) Aggravated/exemplary damages;

(h) Interest at 5% per annum on any judgment sum from 22 March 2011 until the date of full and final settlement;

(i) Costs; and

(j) Any other relief deemed proper and appropriate by this honourable court.

Background Facts

[3] The plaintiff is the beneficial and registered owner of five pieces of adjoining lands held under HS(D) 23474 Lot No. 3181, HS(D) 23475 Lot 3182, HSD(D) 23477 Lot 3183, HS(D) 23478 Lot 3184 and HS(D) 23479 Lot 3185, all in Pekan Ulu Temiang, Negeri Sembilan (collectively known as "the lands") (Individual Registered Titles in CBOD3 Pt B pp. 1-21).

[4] The plaintiff purchased the lands at an auction held on 22 March 2011 for the purchase price of RM18,550,000. On 18 November 2011, the plaintiff was registered as the registered owner of the lands (see proclamation of sale in CBOD2 Pt A pp. 1-7, Form 16F in CBOD2 Pt B pp. 8-9, and official land search results (Sijil Carian Rasmi) in CBOD1 Pt A pp. 26-40).

[5] After the plaintiff had purchased the lands, the plaintiff discovered that the lands were occupied by squatters. The plaintiff also discovered that the squatters were supplied with basic amenities, such as electricity, water and telecommunications services.

[6] The plaintiff also discovered that the defendant had erected, constructed and emplaced telecommunications infrastructure such as poles, conduit pipes, and other equipment ("infrastructure") on the lands, and was providing telecommunication services to the squatters.

[7] Subsequently, the plaintiff further discovered that *vide* a judgment handed down on 22 June 1984 relating to the lands, the Federal Court had held that the squatters were at all material times squatters, and they did not acquire any equitable rights or interests to remain on the lands.

[8] The plaintiff contended that it had never at all material times given consent to the defendant to build its infrastructure on the lands.

[9] After the plaintiff became aware of the defendant's alleged unlawful use and trespass on the lands, the plaintiff wrote a letter dated 18 May 2012 to the defendant (CBOD1 Pt A pp. 6-7) stating that the defendant had given electricity service to the squatters on the lands, and demanding compensation of RM1,282,008 at RM2 per square metre per month for the lands.

[10] It is puzzling why the plaintiff alleged that the defendant was providing electricity service when the defendant's business is to provide telecommunications service.

[11] The defendant replied *vide* its letter dated 9 July 2012 to deny the plaintiff's claim. The defendant also gave notice to the plaintiff that it would take the necessary steps to relocate the defendant's equipment from the lands (see defendant's letter in CBOD1 Pt A p. 9, notice of intention to enter and do work on land under s. 221(1) ("notice") dated 9 July 2012 of the Communications and Multimedia Act 1998 ("the CMA") in CBOD1 Pt A p. 10).

[12] Subsequent to that, the plaintiff raised issues regarding the validity of the two notices issued by the defendant, as a result of which the defendant rescheduled the date for which they intended to enter the lands to remove their infrastructure.

[13] The defendant then informed the plaintiff *vide* its letter dated 28 February 2012 that it would reschedule the relocation of its equipment to 7 September 2012 until 20 September 2012.

[14] However, without the knowledge of the plaintiff, the defendant's employees entered the lands sometime in September 2012 to remove the defendant's infrastructure.

[15] The plaintiff claims that the defendant had trespassed on its lands by placing its infrastructure on the lands without the permission and/or consent of the plaintiff. It is also the plaintiff's claim that the plaintiff had suffered damages as a result of the defendant's trespass.

Issues

[16] The issues are whether the defendant had trespassed on the plaintiff's lands and if so whether damages, rental of the lands, special damages for loss of opportunity and/or loss of profit, quit rent and assessment ought to be paid by the defendant to the plaintiff.

Evaluation And Findings

Whether The Defendant Had Trespassed On The Lands

[17] *Halsbury's Laws of England* 3rd edn vol. 38 at p. 739 spells out what constitutes trespass to land:

> Every unlawful entry by one person on land in the possession of another is a trespass for which an action lies, although no actual damage is done. A person trespasses upon the land if he wrongfully sets foot on, or rides or drives over, it, or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or it seems, if he erects or suffers to continue on his own land anything which invades the air-space of another, or if he discharges water from another's land, or sends filth or any injurious substance which has been collected by him on his own land on to another's land. (see also *Tan Wee Choon v. Ong Peck Seng & Anor* [1985] 1 CLJ 478; [1985] CLJ (Rep) 798; [1986] 1 MLJ 322).

[18] In the present case it is undisputed that the defendant had entered into the plaintiff's lands and had built and emplaced its infrastructure on the lands. A

[19] The question is whether the defendant had committed trespass on the plaintiff's lands since the plaintiff had not given any permission or consent to the defendant to enter into its lands to build and maintain its infrastructure. B

The Defence

[20] The defendant's defence is premised on several contentions which can be summed up as follows: C

(a) the historical basis and legal justification for the defendant's entry into the lands;

(b) the plaintiff had purchased the lands on a "as is where is" basis.

The Historical Basis And Legal Justification For The Defendant's Entry Into The Lands D

[21] The defendant's predecessor, Jabatan Telekom Malaysia ("JTM"), a department which was formerly part of the Federal Government, was licensed under the Telecommunications Act 1950, and had erected the infrastructure on the lands. E

[22] Ramasamy Mookan (DW4), the technical assistant, working for the defendant, testified that he was with the defendant since 1979 and has been serving the defendant for 35 years. He confirmed that the defendant's infrastructure on the plaintiff's lands date back to the 1960s because during that time, the poles used by the defendant for its infrastructure were wooden poles, and the defendant's poles on the plaintiff's lands are wooden. He stated that the telecommunications infrastructure were then erected by JTM for the provision of telecommunications services to Government offices such as Jabatan Pengangkutan in Jalan Negeri Sembilan, as well as two schools ie, Sekolah Kebangsaan Ulu Temiang and Sekolah Rendah Jenis Kebangsaan Cina Chan Hwa. In addition to this, the JTM was also providing telecommunications services to the residents of the Ulu Temiang area using the same "cabinet" which was located at Jalan Ulu Temiang. F G

[23] DW4 stated that when he joined the defendant's service in 1979, cabinet 11 was already there. The same cabinet is still in use today for the defendant's provision of telecommunications service to its existing and new customers in the area. H

[24] DW4's evidence was corroborated by DW5's evidence. DW5 worked in the defendant's museum and confirmed that based on the defendant's museum records, since the 1940s, the defendant had been using wooden poles. Later the poles were changed to metal poles. Currently, the defendant is using concrete poles. I

[25] DW5 testified that there were three wooden poles which were removed when the defendant's infrastructure were removed. This is also recorded in the inventory list (CBOD4 Pt B p. 146) which shows that three wooden poles were among them.

[26] Thus, it cannot be held that the defendant was merely relying on hearsay evidence.

[27] There is no rebuttal evidence from the plaintiff's sole witness, Wong Hing Keong (PW1), the plaintiff's general manager, to prove that the defendant's infrastructure on the lands were not built in the 1960s. Neither did PW1 adduce any evidence that the defendant built its infrastructure on the lands after the plaintiff had purchased the lands. Thus, the court accepts the defendant's evidence that the defendant's infrastructure were built on the lands since the 1960s, and not after the plaintiff had purchased the lands.

[28] In 1981, the lands were alienated by the Negeri Sembilan State Government ("the State Government") to Lesco Development Corporation Sdn Bhd ("Lesco"), and subsequently to Medan Selasih Sdn Bhd ("Medan Selasih").

[29] There is no evidence that Lesco objected to defendant's infrastructure on the lands. PW1 himself confirmed that Medan Selasih, the proprietor of the lands before the plaintiff, did not object to the defendant's infrastructure on the lands. There was no previous claim by Lesco and Medan Selasih against the defendant for trespass on the lands.

[30] The JTM was subsequently privatised and pursuant to the Telecommunication Services (Successor Company) Act 1985, the defendant became the successor company of JTM on 1 January 1987, being vested by the Government of Malaysia with all the rights, designated property and liabilities of JTM.

[31] The defendant contended that the State Government, throughout the years before alienation of the lands, had never objected to the defendant's infrastructure on the lands. The defendant relied on a letter dated 24 January 2014 (exh. D1) ("the letter") issued by Pejabat Pengarah Tanah dan Galian Negeri Sembilan ("PTG") to prove that the entry and emplacement of the infrastructure on the lands was approved by the State Government.

[32] In this letter, the PTG, *inter alia*, stated in paras. 2 and 3:

> 2. Kerajaan Negeri mengambil maklum bahawa Telekom (TM) sering menghadapi masalah tuntutan pencerobohan yang disebabkan oleh peralatan telekomunikasi yang berada di atas tanah-tanah yang diberimilik oleh Kerajaan Negeri kepada pihak-pihak persendirian. Adalah difahamkan bahawa peralatan telekomunikasi tersebut telahpun berada ditanah-tanah yang berkenaan sebelum proses pemberi milikan berlaku.

3. Pada amnya, Kerajaan Negeri tiada halangan kepada mana-mana Jabatan Kerajaan Persekutuan termasuklah Jabatan Telekom Malaysia untuk membuat pemasangan peralatan, tiang dan kabel di kawasan-kawasan tanah milik Kerajaan Negeri, sekiranya pada hemat Kerajaan Negeri, pemasangan-pemasangan tersebut adalah bagi tujuan kepentingan awam dan kemudahan rakyat.

[33] The plaintiff submitted that the letter cannot be accepted as proof that the State Government had consented to the erection of the defendant's infrastructure on the lands for, amongst others, the following reasons:

(a) The letter is merely a general letter to state a general position taken by the State Authority. The letter made no reference at all to the lands, and it did not concern the lands;

(b) Ramlan bin Omar ("DW1"), the general manager of the defendant at its Negeri Sembilan Office, during cross-examination, agreed that the letter did not mean that approval had been granted for the erection of the defendant's infrastructure on the lands;

(c) There is no credible evidence from the defendant that the defendant's infrastructure was built in the 1960s;

(d) The maker of the letter, Dato' Haji Mohd Bahrudin bin Mahfuz ("Dato' Bahrudin"), was not called as a witness to give evidence on whether the letter meant that approval was indeed given to JTM to build the defendant's telecommunications infrastructure on the lands.

[34] The court accepted the letter as evidence. Even though the maker was not called as a witness, it suffices for DW1, being the addressee and recipient of the letter, to tender it in court as an exhibit.

[35] DW1 explained that the defendant did not keep documents or records regarding the defendant's plan for infrastructure built on the lands beyond seven years. In accordance with archive procedure, all documents which were more than seven years old have already been destroyed. Having gone through all the years from the JTM days to privatisation of the telecommunications service, the defendant no longer has documents or records of the 1960s. The court accepts the defendant's explanation as a reasonable explanation. The defendant is therefore allowed to rely on DW1's evidence regarding the contents of the letter.

[36] The letter is self-explanatory. It stated that, generally, the State Government had no objections to any Federal Government Department, including JTM, to install equipment, poles and cables on land owned by the State Government, if such installation is in the public interest and for the benefit of the public. Even though the letter did not specifically refer to the plaintiff's lands, it is headed "KES TUNTUTAN PENCEROBOHAN TANAH PERSENDIRIAN TERHADAP TELEKOM MALAYSIA BERHAD ("TM")".

[37] From the heading and paras. 2 and 3 of the letter, the court finds that the PTG's letter is of general application and is wide enough to cover the defendant in this case, more so when it was addressed to the general manager of the defendant/DW1.

[38] Going by the contents of this letter, the court is satisfied that the State Government had never objected to the defendant's infrastructure being on the lands before the alienation of the lands to Lesco.

[39] Therefore, it can be safely concluded that from the 1960s until the plaintiff purchased the lands at the auction held on 22 March 2011 and was subsequently registered as the registered owner of the lands on 18 November 2011, the State Government, Lesco and Medan Selasih had never objected to the defendant's infrastructure being built and maintained on the lands. The defendant had never been made liable for trespass on the lands, or required to remove its infrastructure from the lands.

[40] In *Bukit Lenang Development Sdn Bhd v. Telekom Malaysia Bhd & Ors* [2012] 1 CLJ 228, the High Court held that the statutory duties and obligation of the second defendant (ie, Tenaga Nasional Bhd) did not absolve it from the liability of trespass.

[41] However, in *Oakfield Enterprises Sdn Bhd v. Tenaga Nasional Bhd* [2010] 8 CLJ 42, the Court of Appeal held that "The fact that the appellant, on the facts, became the new registered owner of the said land on 5 October 1988 did not change the fact that the respondent had been authorised by the land office on 9 November 1974 to enter the said land to carry out the installation of the high-tension cables".

[42] The next question in the present case is whether the plaintiff is justified to make a claim for trespass against the defendant when clearly the State Government had permitted the defendant to install the infrastructure on the lands. The defendant contended that it did not know that the plaintiff owned the lands until it was served with the plaintiff's letter of demand dated 18 May 2012.

[43] Pursuant to the plaintiff's letter of demand, the defendant and the plaintiff had discussions and negotiations on the matter. Finally, the defendant decided to remove its infrastructure from the plaintiff's lands sometime in September, three days before the plaintiff filed this action.

[44] I am of the opinion that whilst the plaintiff has every right to assert its proprietary rights on the lands, in view of the fact that the State Government, and the previous proprietors of the lands, had from historical days since the 1960s not taken any action for trespass against the defendant by way of acquiescence, it is unconscionable for the plaintiff to now file this action for such a huge claim of RM221,472,061. The principle in *Oakfield Enterprises* (*supra*) should apply here.

[45] The evidence shows that the defendant did not know that the plaintiff had purchased the lands until it was served with the plaintiff's letter of demand. It is to be noted that nowhere in the letter did the plaintiff allege that the defendant had trespassed on the lands, other than a demand for compensation.

[46] Upon service of that letter of demand, it is only reasonable that the plaintiff gives the defendant sufficient time to remove its infrastructure from the plaintiff's lands if the defendant is not prepared to pay the compensation of RM1,282,008 as demanded in the letter.

[47] The court finds that the defendant had acted within reasonable time in response to the plaintiff's letter of demand dated 18 May 2012. The defendant sent a letter dated 9 July 2012 (CBOD1 Pt A p. 9) to the plaintiff. The defendant further gave the plaintiff its notice of intention to enter and do work on land under s. 221(1) of the CMA. It was because the plaintiff had raised the issue on the validity of the two notices issued by the defendant, that the defendant had to reschedule the date for which it had intended to enter on the lands to remove its infrastructure.

[48] The defendant informed the plaintiff by letter dated 28 August 2012 that it would reschedule the relocation of its equipment to 7 September 2012 until 20 September 2012.

[49] Throughout the period, the defendant had been keeping the plaintiff informed of its intention to remove the infrastructure. However, the defendant erred when it finally entered the plaintiff's lands to remove the defendant's infrastructure sometime in September 2012. While the court does not condone the defendant's failure to inform the plaintiff of the actual date for its entry on the plaintiff's lands, the court is mindful of the statutory provision of the CMA, in particular s. 214 and s. 215, which confer the defendant with powers, as a licensee, to enter on land for installation of network facilities, or to inspect land and do anything that is necessary for that purpose, including making surveys.

[50] In my opinion, a power to install infrastructure includes a power to remove such infrastructure. Thus, the defendant, which was empowered by the Telecommunications Act 1950 to install infrastructure on the lands, is now also empowered under the provisions of the CMA to remove its infrastructure from the lands. This would entail entry into the plaintiff's lands for that purpose.

[51] The defendant did act swiftly to remove its infrastructure from the lands. The plaintiff did not prove that the defendant caused any damage to the lands as a result of such removal of the infrastructure.

[52] Based on the historical basis and legal justification of the defendant's position, the court holds that the defendants should not be made liable to the plaintiff for trespass, and for damages for trespass.

The Plaintiff Had Purchased The Lands On A "As Is Where Is" Basis

[53] The plaintiff contended that it was because of the defendant's trespass on the lands and the defendant's provision of its telecommunications service to the squatters on the lands that caused the squatters to continue staying illegally on the lands.

[54] Regarding this issue, the court agrees with the defendant's submission that the plaintiff had purchased the lands on the basis of "as is where is". This was shown in the following evidence:

[55] The proclamation of the sale for the public auction, in respect of which the plaintiff had purchased the lands (CBOD2 Pt A p. 2), *inter alia*, stated 'HARGA RIZAB: Hartanah tersebut akan dijual "Dalam Keadaan Sedia Ada".'

[56] Counsel for the plaintiff submitted that the sale of the lands based on "as is where is" is only between the plaintiff and the chargee. The defendant is not a party to the transaction and since there is no privity of contract between the defendant and the plaintiff in that sale and purchase transaction, the defendant cannot rely on the defence of the "as is where is".

[57] The court is of the view that the application of "as is where is" is regarding the plaintiff's purchase of the lands according to its existing condition. The plaintiff is fully aware that it had purchased the lands on the basis of "as is where is".

[58] The plaintiff ought to have known, or is otherwise deemed to have known of the defendant's infrastructure existing on the lands and of any squatters on the lands prior to the plaintiff's purchase of the same. In fact, this was confirmed by PW1 who admitted under cross-examination that the lands were sold subject to the existing condition and rights (if any) on the lands. PW1 confirmed that the plaintiff did not buy the lands with vacant possession.

[59] PW1 further admitted that telecommunications service is not a basic necessity for daily living, unlike the supply of water and electricity. He also admitted that Tenaga Nasional Bhd ("TNB") had supplied electricity to the squatters on the lands. There is therefore no basis for the plaintiff to claim that it is because of the defendant's provision of telecommunications service to the squatters that encouraged and cause the squatters to continue staying on the lands. Without the supply of the basic necessities or amenities such as electricity and water, the squatters would not be able to continue staying on the lands. In a scenario where there is no supply of electricity by TNB, and of water by SYABAS, even if the defendant were to continue providing its telecommunications service to the squatters, it is highly improbable that the squatters would continue to stay on the plaintiff's lands. Thus, the plaintiff's claim against the defendant for trespass and for damages pursuant to it in regard to the presence of the squatters on the lands is without basis

and cannot be sustained. As submitted by counsel for the defendant, the plaintiff should initiate an action against the squatters instead of commencing this action against the defendant.

Whether The Plaintiff Is Entitled To Monthly Compensation Or Rental For Use Of The Lands

[60] The plaintiff claimed the sum of RM23,077,116 for rental of the lands from the time it acquired the lands until the removal of the defendant's infrastructure. The plaintiff based it on the market value of rental on the lands. However, the plaintiff did not produce a valuation report by an independent valuer to support its claim.

[61] The court is of the view that while the defendant is not liable for trespass and damages for trespass, in the interest of justice, the defendant ought to pay the plaintiff a monthly rental of that portion of the lands occupied by the defendant's infrastructure from the time the plaintiff was registered as the proprietor of the lands on 18 November 2011 until the time when the defendant removed its infrastructure from the lands in September 2012 ie, for the period of about ten months.

[62] In the absence of a valuation report being produced by the plaintiff, the court accepts the valuation report of the defendant (CBOD3 Pt B pp. 46-101) which was given, and produced in court by Manohelmi binti Mior Tajudin (DW6), the valuation officer at Jabatan Penilaian dan Perkhidmatan Harta, Seremban, Negeri Sembilan, Kementerian Kewangan Malaysia, as unrebutted evidence.

[63] Based on DW6's inspection of the lands, it is confirmed that the area used by the defendant is only a small fraction of the lands ie, 9,430 square feet or 876.075 square metres out of the total land area of 597,509 square metres. The defendant had used a mere 0.146% of the total land area. DW6 stated that the prevailing market rental value of the lands based on her assessment is 55 cents per square metre per month or RM6.60 per square metre per year.

[64] It is wholly misconceived for the plaintiff to claim rental for the entire lands when in fact the defendant's infrastructure only occupied 876.075 square metres of the total land area.

[65] The court awards the following rental to be paid by the defendant to the plaintiff:

RM0.55 x 876.075 square metres x 10 months = RM4,818.40.

Whether The Plaintiff Is Entitled To Quit Rent Of RM234,677 And Assessment Of RM49,360 On The Lands

[66] The plaintiff's claim for RM234,677 being quit rent for the year 2012 against the defendant is baseless and cannot be allowed. It is the plaintiff's obligation under the law, as a proprietor, to pay the quit rent that is imposed on it.

[67] In any case, as submitted by counsel for the defendant, the plaintiff had entered into a tenancy agreement with two tenants for two different lots (CBOD4 Pt B p. 170 and CBOD4 Pt B p. 180) ie, one tenancy which will expire on 30 September 2015 and the other tenancy which will expire on 30 July 2016. In the tenancy agreement, it is provided in cl. L (CBOD4 Pt B pp. 173 and 183) that "The tenant hereby covenants with the landlord as follows (1) to pay all quit rent, land rates and/or other assessments chargeable on the demised premises during the terms of this tenancy ...". This means that for these two lots, the plaintiff's tenants are already paying the quit rent and assessment. It is unreasonable for the plaintiff to include in its claim the quit rent and assessment for these two lots from the defendant.

[68] Furthermore, there is no tenancy agreement or any other agreement entered between the plaintiff and the defendant where the defendant had agreed to pay quit rent and assessment for the lands. There is no legal basis for the plaintiff to claim quit rent from the defendant.

[69] Regarding assessment, it appears to the court that the plaintiff had concocted the amount RM49,360 for assessment. As submitted by counsel for the defendant, the plaintiff's lands are not subject to assessment. This is confirmed through the letter of Majlis Perbandaran Seremban dated 7 September 2011 (CBOD4 Pt B p. 168). The plaintiff's claim for assessment is therefore vexatious, scandalous and mischievous.

Whether The Plaintiff Is Entitled To Claim For Special Damages For Loss Of Alleged Opportunity And/Or Loss Of Profit For RM198,110,908

[70] The plaintiff only entered into the above mentioned tenancy agreement with two tenants for two lots of the lands.

[71] There is no evidence that the plaintiff had suffered loss of opportunity for use of the lands due to the defendant's infrastructure on the lands, whether in the form of loss of potential tenants, or whether through development of the lands. There is no evidence of a development plan for the lands.

[72] PW1 could not produce any development order issued by the authorities for the development of the lands. There is no evidence that the presence of the defendant's infrastructure on the lands prevented the plaintiff from developing the lands to their full potential.

[73] In the absence of cogent evidence to support the claim, the court cannot allow the plaintiff the monumental sum claimed for loss of opportunity and/or loss of profit by reason of the defendant's occupation of the lands by its infrastructure.

Decision

[74] Based on the above considerations, on a balance of probabilities, the court finds that the plaintiff has failed to prove its claim fully against the defendant.

[75] The plaintiff's claim is dismissed except for prayer 22(b) of the statement of claim where the court allows special damages for the sum of RM4,818.40 for rental of the lands for ten months from 18 November 2011 until September 2012. Interest is allowed on this sum at 4% per annum from 18 November 2011 until the date of full realisation.

[76] The defendant is ordered to pay the plaintiff costs of RM15,000.